(P-16)

G. R. S. 58
Previous references.
Ex. 7. 3 of 01-2

, 1907-8
(Sep: Revr)

File No. 158-07
Serial Nos. 182

Later references.
S.R. 94-08 854, 7, 8
SR 173-16 sl 1.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 182

Part B. for marches

SUBJECT.

Search of houses without a warrant by Excise Assistant Inspectors under Section 31. of the Excise Regulation.

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1) From the Excise Commissioner no. 5692 & 18.1.08 (D. 2612).
States that under clause (c) of Govt. notn no. 11212 — Ex. 7. 3-01 & 6.1.02. Excise Assistant are empowered to exercise all the powers and discharge all the duties conferred and imposed on Excise Offic under section 31 of the Mysore ~~Excise~~ Regulations 1896. which appears to be a mistake as no rule contrary to the provisions of the Regulation could be made, and proposes certain amendments to the notn referred to.

To the Compiler, Mysore Gazette. no. 4824825
notifies the amendment to the notn no. 11212-Ex. 7 & 6.1.02

GPB—8,000—7-4-07

G.R.S. 11] 1907-08

GENERAL AND REVENUE SECRETARIAT

(Sep. Rev.)

NOTES.

S. R. File. No. 158-07.

FILE HEADING.

Search of houses without a warrant by Excise ~~Assistant~~ Inspectors under Sec. 31 of the Excise Regn

From

The Excise Commissioner in Mysore.

No. 5692 Dated 18.1.08 Received 22.1.08?

Diary No. 2612	Enclos.	Spare Copies.	Serial No. 1.

BRIEF ABSTRACT OF LETTER.

States that under clause (c) of G. notfn: No. 11212-E.7.3-013 6.1.02 Excise asst Inspectors are empowered to exercise all the powers and discharge all the duties conferred & imposed on Excise Offrs under sec 31 of Mysore Excise Regn V of 01, which appears to be a mistake as no rule contrary to the provisions of the Regn could be made, and proposes certain amendments to the Notfn referred to.

NOTES AND ORDERS.

Madras rules for search in the Madras Abkari Act the rules & rules issued under the Mysore Excise Regulation should

NOTES—First sheet.

GPB—30,000—20-3-06.

C.R. S. 12]
General and Revenue Secretariat.

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be consistent with the provisions of the Regulation, under Sec 31 of the Excise Regn. Excise Deptt to direct Central Search house without a warrant. The removal of the words "Asstt Superintendent" from para 1 of clause (e) of the rules proposed by the Excise Comr seems therefore reasonable. But the insertion of these words in para 2 of the same clause before the word "Sub-Inspector" and the addition of "32" after "30" in line 3 [illegible] Excise Comr seem to give add power under Sec 32 to [illegible] Sub-Inspectors the powers of the Excise Deptt which they cannot be authorized to exercise under Sec 32. The draft rules sent by the Excise Comr seem therefore to require slight modifications as indicated in pencil.

Submitted for orders

[illegible]

Note.—Contn sheet.

UPB—50,000—17-3-07

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As Excise peons can not exercise the power conferred by Section 32, the insertion of this Section in para 2 of clause (e), as proposed by the Excise Commr. renders it necessary to specify the powers and duties of Excise peons separately and with this object a new para (3) under clause (e) is proposed. If it is considered unnecessary to specify the powers and duties of these officers & it is desired to retain para (2) in which 'peons of the Excise Dept.' appears may remain as it is and the fact that Section 32 does not apply in their case may be indicated by a note under the para. Both alternatives are shown in pencil in the draft notification recd from the Excise Commr.

Seen
4-2-8

Please consult Br (d)

Br

To Br (d) for favour of remarks.

6/2/8

NOTE.—Contn sheet.

GPB—540700—17-3-07

G. R. S. 12]
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It seems possible to make an attempt to explain the rule so as not to be inconsistent with the Regulation.

Under section 3, sub-section 5, an Excise Inspector means an officer appointed under section 4, clause (d).

Under sec 4, clause (e), subordinate officers may be appointed with such powers under this Regulation as Govt may think fit.

Under sec 4, clause (f), Govt may order that any of the powers assigned to officers under clauses (d) and (e) [that is Inspectors and subordinate officers] shall be performed by any officer or any person. "Assigned to officers under clauses ~~de~~ (d) and (e)" must be taken to mean "assigned to officers appointed under clauses (d) and (e)", for clauses (d) and (e) do not assign any powers but empower Govt to make appointments.

Ordinarily, the power to search [without warrant] under sec 31 is one to be exercised by an Excise officer not below the rank of an Excise Inspector. But the combined effect of section 4, clauses

NOTE—Contn sheet.

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There may be cases in which action has to be taken ~~prof~~ promptly under sec 31 for successful detection and the delay in giving information to the Inspector and getting heim may spoil the whole business. An Apt Inspector is paid sufficiently and high and ~~the~~ policy of denying this power to him seems to be not unquestionable. He cannot certainly be deemed inferior to a Police station officer ~~to~~ who can exercise the powers under this section. Ever since 1902, he has been exercising this power, whether rightly or wrongly, and I do not know if there are many instances in which the power has been abused and consequently it has to be taken away from him. Rather than adopt the suggestion of the (Inspector General, Excise) I would propose to amend, if necessary, sec 31 of the Regulation so as to give ~~him~~ an Apt Inspector power to act under it. The words "Apt Insp

NOTE—Contn sheet.

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or "Sub Inspector" may be substituted for "Inspector" or if it is intended to put it in a general way, the words "any Excise × × × × officer" may be replaced by "any Police officer not below the rank of a Police Station officer or any Excise officer of a rank not below that specified by Govt."

The addition of sec 32 in para 2 of clause (e) of the notification as suggested by the (Inspector 4th Asst Comr General) is open to the objection pointed out by Br II, unless as already stated, sec 4 is interpreted liberally so as to give extensive power to Govt and it is intended that a peon should be able to exercise that power (under sec 32) although the section restricts it to officers of and above the rank of Sub Inspectors. Our notification may with advantage be compared with the notification of the Govt of

Note—Contn. sheet

GPB—40,000—12-5-06

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~~Latterly~~ Subsequently when the designations of Excise Officers in Mysore were altered in 1907, the term "asst insp'r" was introduced to denote what was ~~for~~ previously meant by "Insp'r" & the term "insp'r" used in place of "Supervisor". When this change was made no attention was paid to the insertion of the term "asst Insp'r" instead of "insp'r" in Sec 31.

However this may be under the law as it stands "asst. Inspr's" cannot search houses under sec 31, & the term should be removed from ~~clause~~ para 1 of the Notn under ~~clause~~ sec 4(e), till such time as the Regn can itself be suitably amended.

The term "Asst Inspr's" may be added before "Sub Inspr's" in para (2) of the Notn under clause (e).

A further para may be added empowering Asst & Sub Inspr's under sec 32 instead of adding 'sec 32' in para 2 line 3 as suggested by the Ex. Comr

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Note—Contn. sheet.

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G. R. S. 12]
General and Revenue Secretariat.

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	Issue 23/3
2	To the Compiler Mysore Gazette No. 4843 & 25/3/08 Notifies the amendment of the Notification No. 1212-273-01 & 6.1.02

Note—Contn. sheet.

GPB—50,000—17-3-07

No. 3692 OFFICE OF THE EXCISE COMMISSIONER IN MYSORE.

DATED BANGALORE, 18th January 190 7.

From

H.H. Sparkes Esquire,

Excise Commissioner in Mysore.

S.Re. 158-07-1.

To

C.S. Balasundram Iyer Esquire, B.A.,

Secretary to the Government of His Highness the Maharaja of Mysore,

General and Revenue Departments.

Sir,

I have the honor to state that under section 31 of the Mysore Excise Regulation V of 1901 as amended from time to time, the power to conduct house searches without warrant is conferred on the Excise Commissioner, the Deputy Commissioner and any Excise or Police Officer not below the the rank of Inspector or a Police Station Officer. But under clause (e) of Government Notification No.11212-E.F.3-1901, dated 6th January 1902 Excise Assistant Inspectors are empowered to exercise all the powers and discharge all the duties conferred and imposed on Excise Officers in the afore-said section. The latter appears to be a mistake in as much as no rule contrary to the provisions of the Regulation -- could be made. The word "Inspector" having been specifically used in the section, an Assistant Inspector cannot be empower-ed by a rule framed under the Regulation to conduct house-searches without warrant.

2. In the corresponding section of the Madras Abkari Act the word "Sub-Inspector" is used and the change into "Inspector" in the Mysore Excise Regulation appears to have been deliberate. Perhaps the Government did not want to empower any Excise Officer below the rank of an Inspector with the responsible and important power of conducting house-searches without warrant. If this view of mine is correct,

correct, I would request Government to amend the Notification in which the mistake appears to have crept in while copying similar provisions of Madras.

3. The addition of section 32 in para 2 of clause (e) of the aforesaid Notification also appears necessary.

4. A draft Notification to be issued in the matter is herewith submitted.

I have the honor to be,

Sir,

Your most obedient servant

H. H. Lyon

Excise Commissioner

in Mysore.

N O T I F I C A T I O N.

In exercise of the powers conferred by Section 4 of the Mysore Excise Regulation V of 1901 as amended from time to time, and in exercise of all other powers enabling them in this behalf, the Government of His Highness the Maharaja of Mysore hereby make the following amendments in the appointments made under Government Notification No. 11212-E.F.3-1901, dated 6th January 1902:-

(1) Omit "Assistant Inspectors" in line 3, para 1 of clause (e) and substitute "and" for the Comma in the same line between the words "Divisions" & "Inspectors" & insert a full stop after it;

(2) Add "Assistant Inspectors" before "Sub-Inspectors" in line 1, para (2) of clause (e). Also add 32 after 30 in line (3). And omit "and peons" in line 1 and between Asst Inspectors & Sub Inspectors".

(3) Insert a new para as follows - Peons of the Excise Dept - to exercise offences under their own denominations for the purposes of sections 30, 34 &c -

OR

Add a note under para 2 that the orders in 32 post to above will not apply to the peons of the Excise Dept